

84TH CONGRESS  
1ST SESSION

# H. R. 7693

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## IN THE HOUSE OF REPRESENTATIVES

JULY 28, 1955

Mr. MADDEN introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To prescribe policy and procedure in connection with construction contracts made by executive agencies, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That this Act may be cited as the "Federal Construction  
4       Contract Act of 1955".

5       SEC. 2. (a) Each executive agency shall list in the bid-  
6       ding or contract documents relating to each lump-sum con-  
7       struction contract before accepting bids or proposals with  
8       respect thereto, each major category of mechanical specialty  
9       work involved in the performance thereof.

10       (b) No executive agency shall award to, or enter into

1 a lump-sum construction contract with, any prime contractor  
2 unless the name of the contractor with whom the prime con-  
3 tractor will contract for the performance of each major cate-  
4 gory of mechanical specialty work involved which may have  
5 been listed by the contracting executive agency in the bid-  
6 ding or contract documents, has been specified by the prime  
7 contractor in the bid or proposal upon which the contract is  
8 awarded or made.

9 (c) This section shall not prevent any prime contractor  
10 from himself performing any major category of mechanical  
11 specialty work under a lump-sum construction contract  
12 awarded to or undertaken by him if the bid or proposal  
13 referred to in subsection (b) of this section specifies that  
14 the prime contractor will himself perform such category of  
15 the mechanical specialty work.

16 (d) This section shall not be construed to forbid or  
17 prevent any executive agency from awarding separate or  
18 several prime or direct lump-sum construction contracts for  
19 any one construction project.

20 (e) No prime contractor under a lump-sum construction  
21 contract shall have any major category of mechanical spe-  
22 cialty work involved in the performance of such construction  
23 contract as listed by the contracting executive agency in the  
24 bidding or contract documents, performed by any person  
25 other than the person named for the performance of such

1 work in accordance with subsection (b) or (c) of this  
2 section, except in accordance with the provisions of subsec-  
3 tion (f) or (g) of this section.

4 (f) If a contractor named by the prime contractor  
5 under a lump-sum construction contract in accordance with  
6 subsection (b) of this section shall fail or refuse to perform  
7 or complete the work to be performed by him in accordance  
8 with the terms of his subbid or subcontract therefor, the  
9 prime contractor may engage a substitute or different con-  
10 tractor to perform such work: *Provided*, That he first  
11 submits in writing to the contracting executive agency the  
12 name of the substitute contractor.

13 (g) If, for any reason not specified in subsection (f),  
14 a prime contractor under a lump-sum construction contract  
15 prefers to have any major category of mechanical specialty  
16 work on the project covered by such construction contract as  
17 to which he has named a contractor under subsection (b)  
18 hereof performed by a contractor other than the one named  
19 in accordance with said subsection (b), the prime contractor  
20 may engage such substitute contractor if (1) the prime con-  
21 tractor submits to the contracting executive agency in writing  
22 the name of the substitute contractor and such information as  
23 the contracting executive agency may request as to any  
24 change in cost to the prime contractor involved in the pro-  
25 posed change in contractors; and (2) the use of such sub-

1     stitute contractor is permitted in writing by the contracting  
2     executive agency.

3         (h) This Act shall not apply to the following construc-  
4     tion contracts:

5         (1) Contracts to be performed outside the continental  
6     limits of the United States, which limits shall be deemed to  
7     include Alaska.

8         (2) Contracts in which the aggregate bid or proposal  
9     accepted by the contracting executive agency does not  
10    exceed \$100,000.

11        (3) Any contract with specific reference to which the  
12    head of the contracting executive agency determines that the  
13    procedure prescribed herein would result in undue delay and  
14    that the public exigency will not admit of such delay.

15        SEC. 3. For the purposes of this Act--

16        (1) The term "executive agency" means any executive  
17    department or independent establishment in the executive  
18    branch of the Government, including any wholly owned  
19    Government corporation.

20        (2) The term "construction contract" means any con-  
21    tract entered into by any executive agency for the erection,  
22    repair, moving, remodeling, modification, or alteration of any  
23    building or structure upon real estate intended for shelter or  
24    comfort, or for production, processing or travel, including  
25    without being limited to, buildings, bridges, tunnels and high-

1 ways, but not including aqueducts, reservoirs, dams, irriga-  
2 tion and regional water supply projects, flood control  
3 projects, water power development projects, jetties and  
4 breakwaters or the buildings or structures incident to or  
5 included in the contract for such excluded projects.

6 (3) The term "mechanical specialty work" in connec-  
7 tion with a construction contract means all plumbing, heat-  
8 ing, piping, air conditioning, refrigerating, ventilating, and  
9 electrical work, including but not being limited to the fur-  
10 nishing and installation of sewer, drainage and water supply  
11 piping and plumbing, heating, piping, air conditioning, re-  
12 frigerating, ventilating and electrical materials, equipment  
13 and fixtures.

14 (4) The term "prime contractor" means a person hav-  
15 ing a direct contractual relationship with an executive  
16 agency for the performance of a construction contract.

17 (5) The term "person" means an individual, corpora-  
18 tion, partnership, association, or other organized group of  
19 persons. All references to contractor or prime contractor  
20 shall include individuals, corporations, partnerships, associa-  
21 tions, or other organized groups of persons who are con-  
22 tractors or prime contractors.

23 (6) The terms "lump-sum contract" and "lump-sum  
24 construction contract" mean a construction contract, whether  
25 awarded after bid or negotiated, under which the price is

1 fixed or to be fixed by any method other than the cost-plus-  
2 a-fixed-fee method.

3 SEC. 4. (a) Neither this Act nor compliance with the  
4 provisions thereof shall be construed to create any privity  
5 of contract between the United States Government, or any  
6 agency thereof, and any contractor, contracting with the  
7 prime contractor under any construction contract, or give  
8 any such contractor any cause of action against the United  
9 States or any agency thereof arising out of the failure of  
10 any person to comply with the provisions of this Act.

11 (b) Acceptance by an executive agency of a bid or  
12 statement of a prime contractor setting forth the name of a  
13 proposed contractor, or awarding a contract to such prime  
14 contractor after such acceptance, or permitting or denying  
15 the substitution of a contractor in accordance with the pro-  
16 visions of section 2 (g), shall not be construed to be  
17 approval or acceptance by the executive agency of the  
18 United States Government of any contractor named or sub-  
19 stituted, or to relieve the prime contractor of any responsi-  
20 bility for performance of the contract.

21 (c) Nothing in this Act contained shall be construed  
22 to prevent any executive agency from requiring, in its dis-  
23 cretion, approval or acceptance by it of contractors engaged  
24 or to be engaged by any prime contractor on a construction  
25 contract or from making any other requirements it deems

1   advisable in its discretion with respect to contractors engaged  
2   or to be engaged by prime contractors on any construction  
3   contract or from requiring any information it deems advis-  
4   able in its discretion as to the cost of performance of any  
5   construction contract.

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